



# 46<sup>TH</sup> ANNUAL INDIANA CONSORTIUM

*of*

## STATE AND LOCAL HUMAN RIGHTS AGENCIES CONFERENCE

PRESENTED *by:*



# WHO LET THE DOGS IN?

## *HANDLING SERVICE ANIMALS REQUESTS IN A PUBLIC ACCOMMODATION*

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Deputy Director & General Counsel

# OVERVIEW

- ICRC Mission and Quick Overview of Process
- Primary Focus: Service Animals and the ADA
  - Other assistance animals under Indiana State Law
- What is a disability under the law?
- Prohibited Conduct
- Valid Denials
- ICRC Statistics on Public Accommodation Discrimination

# DISCLAIMER

Information and materials are intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities, nor binding on any agency with enforcement responsibility.

# PURPOSE

The Indiana Civil Rights Commission enforces the civil rights laws of the State of Indiana. We investigate complaints of discrimination & educate organizations, companies, landlords, associations, & individuals on their rights & responsibilities under Indiana Civil Rights Laws.

# JURISDICTION

- The Indiana Civil Rights Commission enforces the Indiana Civil Rights Code (IC 22-9) and the Indiana Fair Housing Act (IC 22-9.5)
- ICRC's jurisdiction extends to individuals, private or public entities, housing providers, and business establishments within the State of Indiana.

# PROTECTED CLASSES

Not all discrimination is against the law, but in Indiana a person may not be treated differently because of their:

1. Race
2. Color
3. Sex
4. Veteran Status (in employment)
5. Familial Status (having children under 18, in housing)
6. National Origin
7. Ancestry
8. Religion
9. Disability
10. Age (Investigated by Indiana DOL or EEOC)

# ENFORCEMENT AREAS

The Indiana Civil Rights laws gives ICRC jurisdiction to enforce equal opportunity for all in five (5) specific areas:

- 1.Housing**
- 2.Employment**
- 3.Public Accommodations**
- 4.Credit**
- 5.Education**

# COMPLAINT PROCESS

- Intake Interview
- Formal Complaint
- Dual-Filed
  - Filed with ICRC and the federal EEOC or HUD if within that agency's jurisdiction
- Investigation
- Finding (Cause or No Cause)
- Mediation/Conciliation
- Litigation

# **Public Accommodations**

*Handling Assistance Animals and Other  
Requests in a Public Accommodation*

# APPLICABLE LAWS - FEDERAL

## **Title II of the Civil Rights Act of 1964**

- All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation

## **Title II & III of the Americans with Disabilities Act**

- Prohibits discrimination in state and local govt services and in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public.

# APPLICABLE LAWS - STATE

## **Indiana Code 16-32-3: Rights of Blind and Other Physically Disabled Persons**

- Public Policy of the state to allow anyone with a physical or mental disability the right to be accompanied by a service animal in any place of public accommodation.

## **Indiana Code 22-9: Indiana Civil Rights Act**

- Prohibits discrimination in real-estate transactions, employment (6+ employees), education, credit, and access to public accommodations.

# ANIMALS AND DISABILITY

- Service Animals under ADA and under Indiana Code
- Emotional Support Animal (ESA) or comfort animal
- Pet



# WHAT IS A SERVICE ANIMAL?



Under the ADA, a dog or a miniature horse that has been individually or specially trained to do work or perform tasks for an individual with a disability to mitigate the disability

# WHAT IS A SERVICE ANIMAL?



Indiana has **expanded** the definition to include:

- Hearing animal;
- Guide animal;
- Assistance animal;
- Seizure alert animal;
- Mobility animal;
- Psychiatric service animal;
- Autism service animal

# HOW DO I KNOW IF IT *IS* A SERVICE ANIMAL?

When it is not obvious what service an animal provides, only limited inquiries are allowed.

You can legally ask two questions to make the determination:

1. Is the animal a service animal required because of a disability?
2. What work or task has the animal been trained to perform?

Owner/Staff **cannot and should not** ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task.

# EMOTIONAL SUPPORT ANIMAL

- They are not considered service animals under the ADA
- Help with depression, anxiety, and certain phobias, but do not have special training to perform tasks that assist people with disabilities
- Provides comfort
- However, under Indiana law an emotional support animal may fall under psychiatric service animal

# PETS



- People use the term “companion animal” interchangeably with “pet”
- However, some also use the term to explain an ESA. Be sure to clarify
- People who present with a pet do not have any of the legal rights afforded to people with disabilities who have a service animal or emotional support animal

# ADA DEFINITION OF DISABILITY

**Physical or mental impairment** that substantially limits a major life activity

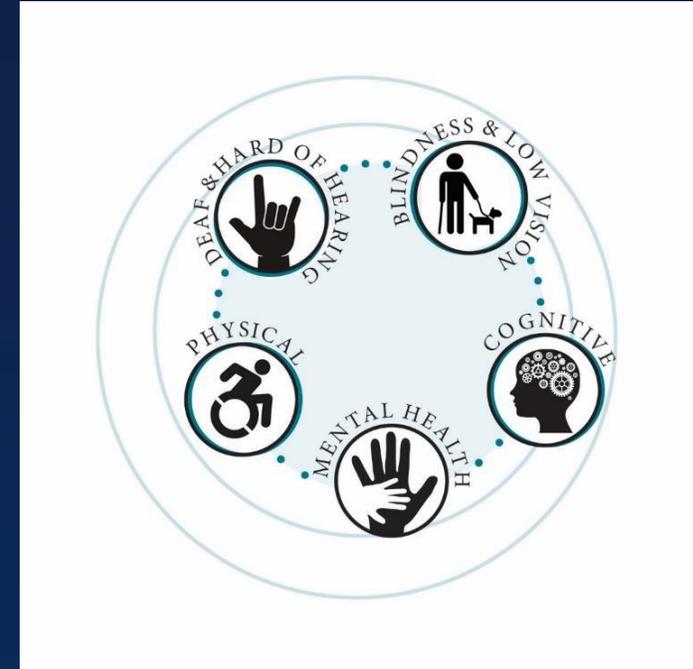
**Record of** an impairment

**Regarded as** having an impairment



## ... IMPAIRMENT THAT SUBSTANTIALLY LIMITS...

- Performance in major life activity compared to most people in general population
- Effect of impairment on person's life
- Not name of impairment



# MAJOR LIFE ACTIVITIES DEFINED

*Activity most people can perform with little or no difficulty*

- Caring for oneself
- Performing manual tasks
- Seeing
- Hearing
- Eating
- Sleeping
- Walking
- Standing
- Lifting
- Bending
- Speaking
- Breathing
- Learning
- Reading
- Thinking
- Communicating
- Working

# LIFE ACTIVITY IS *ALSO*

*Operation of a major bodily function*

## **Animals Can Alert**

- When a person with diabetes has low blood sugar
- Prior to the on-set of a seizure
- In the presence of allergens present that create a threat to the handler's well-being

# “INVISIBLE” DISABILITIES

- ADHD
- AIDS/HIV
- Alcoholism
- Allergies
- Arthritis
- Asthma
- Cancer
- Chronic fatigue
- Color blindness
- Deafness/Hard of Hearing
- Diabetes
- Epilepsy
- Fibromyalgia
- Heart Conditions
- Hemophilia
- Hepatitis
- Intellectual
- Migraines
- Multiple Chemical Sensitivity
- Psychiatric
- PTSD
- Sleep Disorders
- TBI

# SOME TYPES OF TRAINING

## Tasks directly related to disability:

- Autism
  - Repetitive movement alerts
- Blind/Low Vision
  - Orientation and mobility
- Deaf/Hard of Hearing
  - Alerting to auditory stimuli
- Mobility disability
  - Pulling wheelchair
  - Retrieving objects
  - Balance support
- Psychiatric disability
  - Agitation warning
  - (deter inappropriate behavior)
  - Medication reminder

*Sole function - provide comfort: NOT service animal*

# SERVICE ANIMAL HANDLER'S RESPONSIBILITIES

- The animal must remain under the handler's control (usually by using a leash, unless not practicable due to the nature of the disability or task(s) performed) and be housebroken.
- Handler must take corrective action in the event a service animal is aggressive or not behaving.
- Handler is responsible for any damage or if the animal bites another individual or animal.

***Remember, a working service animal isn't free to play, so please don't distract it.***

# EXCLUSION OR REMOVAL OF SERVICE ANIMAL

- A person with a disability cannot be asked to remove his service animal from the premises unless:
  - (1) the animal is out of control and the handler does not take effective action to control it or
  - (2) the animal is not housebroken.
- When there is a legitimate reason to ask that a service animal be removed, staff **must offer** the person with the disability the opportunity to obtain goods or services without the animal's presence.

***Suggestion: Notify/get approval from a supervisor before requesting removal of a service animal. The supervisor should document the steps taken by staff and reason for exclusion or removal.***

# ALLERGIES AND PHOBIAS

Allergies and fear of dogs are  
not valid reasons for denying  
access or refusing service to  
people using service animals.

# PROHIBITED CONDUCT

Cannot require:

- Certification papers
- Identification card
- Vest

*Requiring proof of  
license/vaccinations permitted*



# VALID DENIAL

## AMERICANS WITH DISABILITIES ACT

- Person with disability does not control animal (growling, uncontrolled barking, jumping on people, running away from handler)
- Not housebroken
- Individualized assessment: direct threat to health or safety of others
- Type, size, weight of horse
- Workplace: undue hardship or direct threat
- ***Must offer opportunity to obtain goods/services without animal present***

# VALID DENIAL

When a person with a disability is asked to remove their service dog...

the person with the disability must be given the option to stay.

A service animal should not be excluded permanently unless there is a significant reason for doing so.



Think continued barking in the library vs. biting a patron!

# INDIANA CIVIL RIGHTS COMMISSION

## COMPLAINTS STATISTICS

Public Accommodation Discrimination by Protected Classes  
2013 - Present



Q & A

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